

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 1-8-1996.

CRIMINAL APPEAL No. 707 of 1989

For Approval and Signature:

THE HON'BLE MR. JUSTICE H.R. SHELAT

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether Their Lordships wish to see the fair copy of Judgment ?
4. Whether this case involves substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge? 1 to 5:

No.

State of Gujarat : Appellant.

Versus

- 1.Nuraji Miyaji Makanojiya,
- 2.Salembhai Nurabhai Makanjiya,
- 3.Abharam Jamalbhai Makanojiya,
- 4.Vala Nura Makanojiya,
- 5.Rahim Jiva Makanojiya,
- 6.Gava Gala Kalu,
- 7.Abharam Alji Rajpura,
- 8.Makanojiya Alji Jamal,
- 9.Makanojiya Jamal Alji. : Respondents.

Shri S.T. Mehta, APP for the appellant State.

Ms. Kusum M. Shah, Advocate for respondents Nos.1 to 9.

CORAM : MR.JUSTICE H.R.SHELAT

Date of Order: 1/8/96

ORAL JUDGMENT

The respondents-accused were tried before the then learned Judicial Magistrate, (F.C.) at Palanpur for the offences under Section 147, 148, 323, 324, 325, 504 read with Section 149 of the Indian Penal Code & Section 135 of the Bombay Police Act and came to be acquitted on 8th August 1989, consequent upon which the present appeal by the State calling in question the acquittal.

2. Dolabhai Becharbhai Harijan is having three brothers. All the brothers have a field bearing Survey No. 153 situated within the sim of village Mumanvas. To the West of their field, a bund was being raised about 100 feet in length by Abharam Noora and Avlibhai. In company of Keshuji Dolabhai Becharbhai Harijan had therefore gone to the field as the bund was being raised. He found that all the respondents with the spade were digging the ground for the purpose of bunding. Dolabhai Becharbhai asked the respondent not to raise the bund and disturb the area of his field. The respondents firm in their plan, paid no heed, on the contrary they got wild and started to shower the blows with the spades they were having. Some of them were having the sticks and rest were having the spades for the purpose of digging operation. As all the respondents assaulted, Dolabhai sustained injuries on different parts of the body, namely right shoulder, head, face, hand etc. He fell down with bleeding injuries. He was taken to the hospital for treatment initially at Vadgam, and thereafter he was shifted to Palanpur for further and better treatment, and therefrom he was shifted to Vadilal Sarabbai Hospital at Ahmedabad. A complaint was then lodged before the police setting the police investigation to motion. After usual investigation, the chargesheet came to be filed before the lower Court which was registered as Criminal Case No. 1630 of 1982. The respondents appeared after being served with the summons. When charge was framed and their plea was taken they pleaded not guilty and claimed to be tried. The learned Judge below recorded the evidence adduced by the prosecution and appreciating the evidence, he found that the prosecution had failed to establish the charge beyond reasonable doubts, and therefore he acquitted all the respondents with which they were charged. It is against that judgment and order of acquittal, the State has preferred the present appeal.

3. The State has assailed the judgment and order of the lower Court submitting that the evidence of the injured and eye witness Keshuji was sufficient to fasten the respondent with liability. The evidence was

consistent. No doubt arises therefrom. The witnesses were not shaken in the cross-examination. The learned Magistrate therefore ought to have accepted their versions and held the respondents guilty. On behalf of the respondents, it was submitted, taking me to the entire evidence on record, that the learned Magistrate was perfectly right in passing the order of acquittal.

4. Looking to the rival submissions before me, the only question about appreciation of evidence arises. The evidence of Keshuji who accompanied the injured Dolabhai is no doubt the eye witness. Of course he left the place earlier because of fear, but he was knowing who were the assailants as he could see the respondents digging the ground for the purpose of erecting the bund. He left the place not before the incident cropped, in but some times after the incident occurred. However, he does not name the respondents although he may not account the occurrence of the incident in details as to who was holding what weapon and how many blows one gave by spade or stick and from which side, what was the distance etc. He has made it clear that by the blunt portion of the spade injuries were caused. His such evidence is not helpful to connect any of the respondents with the charge.

5. It is now necessary to refer the Certificates issued by the doctors in order to appreciate this evidence. The doctor who initially examined Dolabhai, has issued the certificate Exh. 92. As mentioned therein, the doctor found C.L.W. on right parietal bone, punctured wound just in front right ear; punctured wound on right maxilla bone; C.L.W. on posterior aspect and middle of right fore arm; an incise wound on lateral aspect of right upper part of the hip joint; and C.L.W. on middle of scapula. According to the doctor, the injuries Nos. 2, 3 & 5 can be caused by a sharp-cutting instrument while rest of the injuries can be caused by hard and blunt substance. It is pertinent to note that Dolabhai does not say how the punctured wound and incise wound came to be inflicted. According to him, the injuries were caused by the sticks and blunt portion of the spades. Nowhere he says about sharp-cutting instrument or pointed instrument. However, the doctor has found the punctured wound and also the incise wound. Thus the injured, it seems, is suppressing the manner in which the incident happened and the fact how the injuries not possible by hard and blunt article came to be sustained. There is, therefore, a reason to believe that for the reasons best known to him, he has come forward with the distorted versions shrewdly suppressing the

truth. His evidence therefore cannot be accepted without any independent corroboration.

6. It may be noted that at Palanpur, Dr. K.R. Solanki examined the injuries and issued the certificate Exh.67. He found five injuries, namely stitched wound on right cheek; stitched wound on right parietal region, diffuse swelling on right thigh; and contusion over left scapula. This doctor is not in a position to opine with what weapon the injuries must have been caused because the wounds were stitched. But the injuries he found on certain parts are not at all supported by the former doctor issuing the certificate, Exh. 92. No injury on the cheek has been found by the doctor at Vadgam and the doctor at Palanpur has not found any injury on right scapula. The doctor at Vadgam found incise wound on the hip joint while the doctor at Palanpur has not accordingly found this injury. So both the doctors to an extent found different injuries on different parts which is possible when unusual happens. The doctor at Ahmedabad in V.S. Hospital issued the certificate at Exh.83. He found CLW on parietal region; stitched wound on the right side face; stitched wound on the right thigh upper lateral aspect; and puncture wound on the right forearm. He took X-Ray and found that right radius bone was fractured and left scapula bone was also fractured. Thus, this doctor states about fracture and four injuries only against the six injuries found by the doctor at Vadgam. The doctor at Palanpur did not find any fracture. Thus all the three doctors are not consistent in the numbers of the injuries and affected parts of the body. Likewise they are also not harmonious on the nature of the injuries. When accordingly the discrepancies are there and the same are not explained or elucidated at all by the prosecution leading necessary evidence, the case of the prosecution cannot be said to be credible.

7. According to Dolabhai Becharji, Abharam Vala and Vala Kala also caused injuries, but those two persons are not joined as accused and they are let off without being prosecuted. It is also not made clear why they are let off. When two persons assailing and causing injuries are let off, abovenamed nine are alleged to have committed the wrong and out of those nine, specific allegation has been made against respondents Nos. 1, 2, 5, 8 & 9 by the injured, the possibility that few were let off for the reason suppressed and other innocents were roped in, cannot be ruled out. Because of that possibility and also the abovestated diversities of the injuries, the case of the prosecution must be viewed with suspicion.

8. It is also pertinent to note that according to Dolabhai Becharji, three blows by spade on his left hip were given, but neither of the doctors has found any injury on that part of the body. That also casts a serious doubt on the bonafides of the injured.

9. The complainant is not the eye witness and therefore he is not in a position to help the prosecution so as to connect the accused with the charge. No doubt, panchnama of the scene of offence is drawn at Exh.56, but the investigating agency could not find blood or any other mark because of rains. The respondents were arrested and weapons were seized. In that regard, the panchnama, Exh. 72 was drawn, but the police found no mark throwing light on the proposition. Hence, those panchnamas are also not at all useful to me in determining the points that arise for consideration. Rest of the evidence is also not helpful as nothing is found which would connect any of the respondents with the charge.

10. In view of the matter, the learned Magistrate below has rightly appreciated the evidence and reached a conclusion in favour of the respondents. The learned Magistrate, therefore, cannot be said to have committed any error. The order of acquittal passed, being quite in consonance with law, requires to be maintained. The result is that the appeal is devoid of merits and is therefore dismissed. The order of acquittal is maintained.

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(R.M. Ravindran)
Private Secretary
to the Hon'ble Judge
High Court of Gujarat
Ahmedabad